



MATERIALS for
INTERNATIONAL ENVIRONMENTAL LAW & DIPLOMACY (Law 259S)

Volume 3:

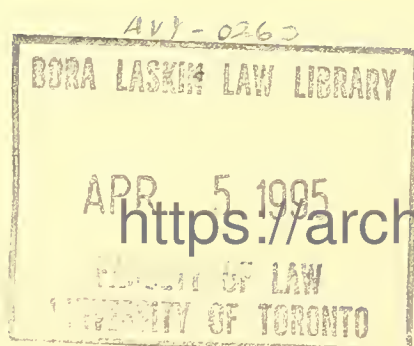
TENDING TO LOCAL COMMONS AND LOCAL COMMUNITIES:
AN INTERNATIONAL LAW OF SUSTAINABLE DEVELOPMENT?

Winter 1995 (1994-1995)

Prepared by
Professor Craig Scott,
Faculty of Law,
University of Toronto

This volume is for the educational use of the students of the
Faculty of Law, University of Toronto, and students at other
educational institutions to whom the volume may be distributed.
This volume is not to be considered as having been published.

Digitized by the Internet Archive
in 2018 with funding from
University of Toronto



<https://archive.org/details/materialsforinte02scot>

BORA LASKIN LAW LIBRARY
UNIVERSITY OF TORONTO

MATERIALS for
INTERNATIONAL ENVIRONMENTAL LAW & DIPLOMACY (Law 259S)

Volume 3:

TENDING TO LOCAL COMMONS AND LOCAL COMMUNITIES:
AN INTERNATIONAL LAW OF SUSTAINABLE DEVELOPMENT?

Winter 1995 (1994-1995)

Prepared by
Professor Craig Scott,
Faculty of Law,
University of Toronto

This volume is for the educational use of the students of the
Faculty of Law, University of Toronto, and students at other
educational institutions to whom the volume may be distributed.
This volume is not to be considered as having been published.

Table of Contents

TOPIC 6

TRADE, ENVIRONMENT AND COMMUNITY

GATT/WTO

Articles I - III, XI, & XX of the General Agreement on Tariffs and Trade in GATT, Basic Documents and Selected Instruments, Vol. VI (1969) 1

Benedict Kingsbury, "Environment and Trade: The GATT/WTO Regime in the International Legal System" in A.E. Boyle, ed., Environmental Regulation and Economic Growth (Oxford: Clarendon Press, 1994) 7

Report of GATT Panel, United States - Restrictions on Imports of Tuna (Mexico v. The United States) [Tuna-Dolphin I], in (1991) 30 I.L.M. 1594 at 1598, 1616 29

"Environmental Measures and Trade" in C. Ford Runge with Francois Ortalo-Magne and Philip Vande Kamp, Freer Trade, Protected Environment: Balancing Trade Liberalization and Environmental Interests (New York: Council on Foreign Relations Press, 1994) 42

James Cameron and Jonathan Robinson, "The Use of Trade Provisions in International Environmental Agreements and Their Compatibility with the GATT" (1991) 2 Yb. I.E.L. 1, at 15, 24 51

Report of GATT Panel, United States - Restrictions on Imports of Tuna (EEC and the Netherlands v. The United States) [Tuna-Dolphin II], in (1994) 33 I.L.M. 839 at 842 57

NAFTA

Articles 101-105, Annex 104.1, Articles 201, 309, 904 - 915, 1114, 2003 - 2005, & 2015 of NAFTA in Government of Canada, North American Free Trade Agreement (Ottawa: Ministry of Supply and Services, 1992) 86

North American Agreement on Environmental Cooperation [NAFTA Side Agreement] (1993) 32 I.L.M. 1480 at 1482 103

Frederick M. Abbott, "The NAFTA Environmental Dispute Settlement System as Prototype for Regional Integration Arrangements" (1993) 4 Yb. I.E.L. 5 120

Gilbert R. Winham, "Enforcement of Environmental Measures: Negotiating the NAFTA Environmental Side Agreement" (1994) 3 Jl. of Environ. and Dev. 29 134

Stephen P. Mumme, "Enforcing international Environmental Agreements: Lessons Learned from the U.S.-Mexico Border" (1994) 3 Jl. of Environ. and Dev. 71 at 79 140

Heraldo Munez, "The 'Green' vs. Trade Debate in the Americas" (1994) 3 Jl. of Environ. and Dev. 71 at 79 144

Further Perspectives and Commentaries on Trade and Sustainable Development

Stephan Schmidheiny with the Business Council for Sustainable Development, Changing Course: A Global Business Perspective on Development and the Environment (Cambridge, Mass.: MIT Press, 1992) 69 150

J. Owen Saunders, "Trade and environment: the fine line between environmental protection and environmental protectionism" (1992) 47 International Journal 723 157

S. Shrybman, "GATT: Why Wasn't Environmental Protection on the Table?" (Nov/Dec 1990) 15(6) Newsletter of CELA 2 163

Xavier Carlos Vasquez, "The North American Free Trade Agreement and Environmental Racism" (1993) 34 Harv. Int'l Law Jl 357 165

H. E. Daly, "Steady-State and Growth Concepts for the Next Century", F. Archibugi and P. Nijkamp, ed., Economics and Ecology: Towards Sustainable Development (Dordrecht, Neth.: Kluwer, 1989) 73-86 168

Edith Brown Weiss, "Environment and Trade as Partners in Sustainable Development" (1992) 86 AJIL 728 176

TOPIC 7

FROM THE TRAGEDY OF LOCAL COMMONS TO HUMAN RIGHTS IN THE COMMONS: FOCUS ON THE RIGHTS OF LOCAL COMMUNITIES, ESPECIALLY INDIGENOUS PEOPLES

Two Perspectives on the Conceptual and Doctrinal Relationship(s) Between Human Rights and the Environment

Gunther Handl, "Human Rights and Protection of the Environment: A Mildly 'Revisionist' View" in A. Cancado Trindade, ed., Human Rights, Sustainable Development and the Environment 117 (San José: Instituto Interamericano de Derechos Humanos, 1992) 180

Dinah Shelton, "What Happened in Rio to Human Rights?"
(1992) 3 Yb. I.E.L. 75 194

Proposed and Soft Legal Instruments Apart from Those in Topic 1

The 1994 Draft Declaration of Principles on Human Rights and the Environment, drafted on May 16, 1994, by a group of experts convened by the Sierra Club Legal Defense Fund 204

Group of Experts of the World Commission on Environment and Development, Commentary on Article 1, "Fundamental human right" 1

Declaration on the Right to Development, Adopted by General Assembly Resolution 41/128 of 4 December 1986 211

Case Study: The Huaorani, Ecuador and Multinational Oil Companies

The Center for Economic and Social Rights, Rights Violations in the Ecuadorian Amazon: The Human Consequences of Oil Development (March 1994) 214

Probe International, Letter re. Petro-Canada's Role in Ecuador, November 1989 241

Confederacion de Nacionalidades Indigenas de la Amazonia Ecuatoriana (Confeniae), Petition to the Inter-American Commission on Human Rights, The Huaorani People v Ecuador, June 1, 1990 (The Sierra Club Legal Defence Club, Of Counsel) 243

Confederacion de Nacionalidades Indigenas de la Amazonia Ecuatoriana (Confeniae), Supplemental Report to the Petition to the Inter-American Commission on Human Rights, The Huaorani Nation v Ecuador, January 1993 (The Sierra Club Legal Defence Club, Of Counsel) 261

Press Release from the Sierra Club Legal Defense Fund, Human Rights Officials Visit Ecuador and Discover Sever Abuses by Oil Companies and Government, November 16, 1994 270

Daniel O. Suman, "Ecuador" forthcoming in (1994) 5 Yb. I.E.L. 271

'Tragedy of the Commons' and Community Rights in the Commons

Garrett Hardin, "The Tragedy of the Commons" (1987) 162 Science 1243 273

Daniel Bromley and Michael Cernea, Abstract of The Management of Common Property Natural Resources: Some Conceptual and Operational Fallacies, World Bank Discussion Paper # 57 (The World Bank: Washington, D.C., 1989) 275

- Fikret Berkes and David Feeny, "Paradigms Lost: Changing Views on the Use of Common Property Resources" (1990) 17(2) Alternatives 48 276
- Elinor Ostrom, "The Fragility of Nova Scotian Inshore Fisheries" in Governing the Commons: The Evolution of Institutions for Cooperative Action 173 (Cambridge, Cambridge Univ. Press, 1990) 285
- John Stackhouse, "When technology doesn't really help people at the bottom" (Feb. 18, 1993) The Globe and Mail A16 283
- B. Carty, "You can't eat flowers" in (December 1990) 214 The New Internationalist 18-19 288
- Gita Sen and Caren Grown, "Systemic Crises, Reproduction Failures, and Women's Potential" in Development Crises and Alternative Visions: Third World Women's Perspectives 50, 89 (New York: Monthly Review Press, 1987) 290

TOPIC 8

TOWARDS A LAW OF SUSTAINABLE DEVELOPMENT: FORESTS AND BIODIVERSITY

Causes of and Responses to Tropical Deforestation

- Norman Myers, "The Anatomy of Environmental Action: The Case of Tropical Deforestation" in Kingsbury and Hurrell, eds., The International Politics of the Environment 430 (Oxford: Clarendon Press, 1992) 303

R. Winterbottom, Taking Stock: The Tropical Forest Action Plan (TFAP) After Five Years (World Resources Institute, June 1990), "Underlying Causes of Tropical Deforestation" and "Confronting the Cycle of Destruction: the TFAP for Ecuador" 316

International Forest Law?

Non-legally binding authoritative statement of principles for a global consensus on ...all types of forests, (1992) 3 Yb. I.E.L. 830 321

Friends of the Earth, The Tropical Timber Trade: Towards Sustainability, Position Paper on the International tropical Timber Organization (ITTO) (June 1988) 324

International Tropical Timber Agreement, January 1994 forthcoming in (1994) 5 Yb.I.E.L. 334

- Hugo M. Schally, "Forests: Towards an International Legal Regime?" (1993) 4 Yb.I.E.L. 30 353
- Karin Mickelson, "Seeing the Forest the Trees and the People: Coming to Terms with Developing Country Perspectives on the Proposed Global Forest Convention", Paper for CCIL Research Project -- An International Forest Convention: Canadian Perspectives and Proposals (version of January 5, 1996) 364
- T. Alpin, "Environmentalists Criticise International Timber Organisation's Report" (June 1990, Third World Network Features) ITTO stuff 376
- Report of the Second Meeting of the Intergovernmental Working Group on Forests, Hull, Canada, October 10-14, 1994 (Oct. 31, 1994) 381
- Ecosystem Crisis: Loss of Non-Human Species, Human Population Growth and their Inter-relationship
- Patricia Birnie and Alan E. Boyle, Ch. 12, "The Emerging Regime for Conservation of Migratory and Endangered Land-based Species" in International Law & the Environment (Oxford: Clarendon Press, 1992) 463 387
- Convention on the International Trade in Endangered Species of Wild Fauna and Flora, 1973 (Washington), [CITES] reproduced in David S. Favre, International Trade in Endangered Species: A Guide to CITES (Dordrecht: Martinus Nijhoff, 1989) 397
- N. Kayfitz, "The Growing Human Population" (1989) 261(3) Scientific American 118 407
- Lipton, New Strategies and Successful Examples for Sustainable Development in the Third World, Presentation to Joint Economic Committee of the U.S. Congress, Subcommittee on Technology and National Security (June 20, 1989) 410
- Ramachandra Guha, "Radical American Environmentalism Wilderness Preservation: A Third World Critique", (1989) 11 Environmental Ethics 71 414
- J.Z.Z. Matowaniyika, "Cast Out of Eden: Peasants versus Wildlife Policy in Savanna Africa" (1989) 16(1) Alternatives 30-39 421
- J.F. Hicks with the collaboration of H.E. Daly, S. Davis and M. de Lourdes de Freitas, Executive Summary of Ecuador's Amazon Region: Development Issues and Options, World Bank Discussion Paper #75 (The World Bank: Washington, D.C., 1990) 427

<u>Convention on Biological Diversity</u> , 5 June 1992 (1992) 3 <u>Yb.I.E.L.</u> 664	430
Francoise Burhenne-Guilmin and Susna Casey-Lekkowitz, "The Convention on Biological Diversity: A Hard Won Global Achievement" (1992) 3 <u>Yb.I.E.L.</u> 43	440
<u>Towards a Law of Sustainable Development: Focus on the World Bank</u>	
B. Rich, "The Emperor's New Clothes: The World Bank and Environmental Reform" (Spring 1990) <u>World Policy Journal</u> 305	449
Durning, "Mobilizing at the Grassroots" in L. Brown <u>et al.</u> , <u>State of the World 1989</u> ,	462
Probe International, "Environmentalists, Fed Up With World Bank Rhetoric, Demand Promises Be Honoured" (Nov. 1990) <u>Probe Alert</u>	466
David Hunter and Katharine Ray, "Multilateral Lending Activities" (1993) 4 <u>Yb.I.E.L.</u> 286	467
World Bank, <u>Bank Procedures: Disclosure of Operational Information</u> , Doc. BP 17.50, December 1993, and World Bank, <u>Resolution No. 93-10/Resolution No. IDA 93-6 on The World Bank Inspection Panel</u> , Doc. BP 17.50, December 1993, in (1993) 4 <u>Yb. I.E.L.</u> 872	468
Herman E. Daly, "Sustainable Development" in <u>Steady-State Economics</u> , 2nd. ed. 248 (Washington, D.C.: Island Press, 1991)	477
Neil A.F. Popović, "The Right to Participate in Decisions that Affect the Environment" (1993) 10 <u>Pace Env. Law Rev.</u>	482